

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2148 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

LAXMISHANKER DAMODARDAS MEHTA

Versus

STATE OF GUJARAT

Appearance:

MR BR KYADA for Petitioner
MR JR NANAVATI for Respondent No. 3
None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 29/02/2000

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. The petitioner prayed for following reliefs in
the special civil application:

(a) a writ of mandamus, or a writ in the nature of mandamus, or any writ or order quashing and setting aside the auction dated 21st December, 1987 and order dated 20-2-1988 Annexure A, C respectively.

(b) Your Lordships be pleased to restrain the respondents its servants, officers or subordinates by taking possession of the land put in auction by its order dated 21st December, 1987 and further restrain the respondents and other officers that they may not take possession of said land in question and further they may not disturb the rightful possession of the petitioner and his family members.

(c) pending admission and final hearing of this writ petition kindly stay the operation of order dated 11-3-1988 passed by Special Recovery Officer No.1, Land Development Bank, Amreli and auction dated 21st December, 1987 and further proceedings regarding auction.

(d) Any relief as deemed fit in the interest of justice.

3. The counsel for the respondent No.3 admits that it has not filed any reply to the special civil application, and as such, the averments made in the special civil application stand uncontroverted.

4. In para-7 of the special civil application, it is stated that in respect of the letter of the petitioner dated 22nd November, 1987, the officer of the Bank under its letter dated 25th November, 1987 has admitted that the petitioner deposited Rs.12,500/= by cheque and Rs.35,000/= has been deposited by Ramaben Rajguru. It is also borne out from the averments made in this paragraph that Ramaben Rajguru, the respondent No.4 herein, is the daughter of the petitioner's elder brother. The elder brother of the petitioner has share in the agricultural land for which loan has been taken. For recovery of Rs.45,500/-, the land in dispute had been put to auction by the Bank but against this amount, the petitioner and Ramaben have paid Rs.47,500/=. Ramaben has not contested this special civil application. Even if it is taken that Ramaben had at later point of time made request to the Bank to give her Rs.35,000/= how far it is justified by the Bank to auction the land in dispute. Ramaben is the daughter of the elder brother of the petitioner and she

has share in the property and if she has deposited this amount, it is deposited against this demand of loan.

5. Learned counsel for the respondent No.3 submits before this court that this amount of Rs.35,000/= has been deposited by Ramaben against this demand of Bank and not against any loan taken by her. What Shri Nanavati contends that when Ramaben has requested for refund of this amount, the Bank has proceeded to auction this property in dispute.

6. This approach of the Bank is wholly perverse. It may be a dispute in between Ramaben and the petitioner. Ramaben could have claimed this amount from the petitioner if she was not under any obligation to pay anything towards loan of the Bank taken but once this amount has been paid by Ramaben towards the outstanding amount of the Bank, it has to be adjusted accordingly rather than to undertake the onerous process and put heavy burden of expenses upon the Bank. It is not the case where Ramaben has filed any suit for recovery of this amount from the Bank. Admittedly, this amount of Rs.35,000/- has also not been paid to Ramaben. In the facts of this case, whole of the action of respondent-Bank to proceed for recover of the amount against the petitioner is arbitrary and it cannot be allowed to stand. It is a case where not only this petition has to be allowed but heavy costs has to be imposed upon the respondent-Bank but no order of costs has to be made.

7. In the result, this special civil application succeeds and the same is allowed and the prayer made in clause (a) and (b) of para-12 of the special civil application is granted. Rule is made absolute accordingly with no order as to costs.

zgs/-